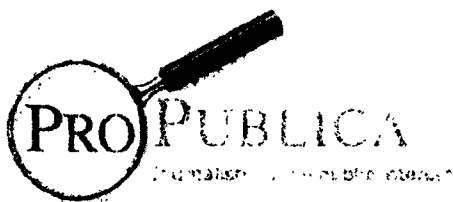


Exhibit 1

Case No. \_\_\_\_\_



## 1 FOIA REQUEST

Dec. 10, 2008

U.S. DEPARTMENT OF TRANSPORTATION  
 National Business Aviation Association  
 1000 Pennsylvania Avenue, N.E.  
 Washington, D.C. 20002

Through Laura Brown, public affairs officer  
 Via e-mail laura.j.brown@faa.gov

CONTROL NO. 100-10447  
 CASE TO BE COORDINATED  
 APPROPRIATE, SIGNED AND  
 BY \_\_\_\_\_

Under the Freedom of Information Act, I am requesting a **list of all requests to block the public's ability to track an aircraft or flight from ASDI and ETMS databases since Jan. 1, 2000.** Please note that I would like to receive this information electronically.

I believe that the best way to fulfill this request would be to provide an electronic copy of the Blocked Aircraft Registration Request database. The National Business Aviation Association says on its Web site (<http://www.nbaa.org/ops/security/barr/>) that the "NBAA administers the BARR (Blocked Aircraft Registration Request) database on behalf of the FAA." I believe that makes it public information.

If you determine the BARR database is not public information, I believe the VOLPE Center maintains an electronic database of block requests made to the FAA.

Please note that I would like to receive the database in electronic format. I can accept the data in several formats (xls, access, txt, etc.) and can accept the data on a variety of media (CD-ROM, e-mail attachment, etc.). If the database uses codes for the column headings, please include the data dictionary, record layout, code sheet or any other documentation necessary to interpret the data.

In order to help determine my status to assess fees, you should know I am a reporter for ProPublica, an independent, non-profit newsroom that produces investigative journalism in the public interest, based in New York.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information that is of current interest to the public because this information is being sought for dissemination to the general public.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities.

Because time is very much a factor, I ask that you communicate with me by telephone or e-mail if you have any questions. My phone number is 917-512-0217, and my e-mail address is michael.grabell@propublica.org. To save time and cost, please e-mail the records if possible.

If you deny any part of this request, please cite each specific reason that you think justifies your refusal to release the information and notify me of appeal procedures available to me under the law.  
 Thank you for your assistance with my request.

Michael Grabell, staff writer

Voice (917) 512-0217

Fax (212) 785-2634

michael.grabell@propublica.org

One Exchange Plaza 23rd Floor New York, New York 10006 212-514-5250 propublica.org

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Clerk, U.S. District and  
 Bankruptcy Courts



U.S. Department  
of Transportation

Federal Aviation  
Administration

800 Independence Avenue, SW  
Washington, DC 20591

January 12, 2009

Mr. Michael Grabell  
Staff Writer, *ProPublica*  
One Exchange Plaza, 23<sup>rd</sup> Floor  
New York, NY 10006

**Freedom of Information Act (FOIA) Request 2009-1947**

Dear Mr. Grabell:

This is to acknowledge receipt on January 9 of your December 10 FOIA request for a list of all requests for the period January 1, 2000 to the present to block the public's ability to track an aircraft or flight from ASDI and ETMS databases.

Your request has been assigned for action to the following Federal Aviation Administration office:

Air Traffic Organization  
800 Independence Avenue, SW  
Washington, DC 20591

Contact: Dean Torgerson  
FOIA Coordinator  
Telephone: 202-493-4119

If you wish to inquire as to the status of your request, please contact the assigned FOIA coordinator. Please refer to the above-referenced number on all future correspondence regarding this request.

Sincerely,

Joann Noonan  
FOIA Specialist



March 20, 2009

Dean Torgerson  
FOIA Coordinator  
Air Traffic Organization  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

**Re: Freedom of Information Act (FOIA) Request 2009-1947**

Dear Mr. Torgerson:

The National Business Aviation Association ("NBAA") hereby objects to the release of records in response to the above-referenced Freedom of Information Act ("FOIA") request sent to the Federal Aviation Administration ("FAA") by a staff writer of ProPublica (the "Requester") on December 10, 2008 (the "FOIA Request Letter"). The Requester is seeking "a list of all requests to block the public's ability to track an aircraft or flight from ASDI and ETMS databases since Jan. 1, 2000." FOIA Request Letter, first paragraph. As the submitter of the information sought by the Requester, NBAA is exercising its rights under Executive Order 12,600 of June 23, 1987, and 49 C.F.R. § 7.17<sup>1</sup> to comment on the FAA's potential release of records responsive to the FOIA Request Letter. As explained below, NBAA strongly objects to the public disclosure of the information sought by the Requester on the basis of FOIA Exemption 4 (trade secrets and commercial or financial information).<sup>2</sup>

Aircraft owners or operators with privacy, commercial, or security-related concerns with respect to the public availability of Aircraft Situation Display to Industry ("ASDI") data may seek to block dissemination of these data by utilizing NBAA's Block Aircraft Registration Request ("BARR") service. Owners or operators (generally NBAA Members, but also other aircraft owners or operators) may submit a formal and verifiable BARR letter to NBAA, requesting that ASDI data be barred from public dissemination with respect to movements of specific aircraft. The BARR requester may seek to block the data either at the ASDI data source (i.e., within FAA), or via the commercial ASDI vendors that make these data available to third-party users. In response to these BARR letters, NBAA provides, on a monthly basis, a list to FAA (via the Volpe Center) of airplane tail numbers to be blocked (or unblocked) from public ASDI dissemination at the FAA source.

To the best of NBAA's knowledge and belief, the only way for an aircraft operator to attempt to block access to aircraft situation display data by the public is via the BARR program administered by NBAA. FAA does not process individual ASDI block requests. Rather, NBAA informally worked out the BARR system with FAA as a "conduit" service to NBAA Members (and others who wish to use the system). NBAA's administration of BARR is not compulsory, nor is it governed by a written agreement with FAA, a regulation, a formal FAA policy, or a statute.<sup>3</sup> Accordingly, NBAA has good cause to believe that if it

<sup>1</sup> See also FAA Order 1270.1, Freedom of Information Act Program (June 13, 2000), Chapter 3, paragraph 35a(4)(c) and 18.

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> Sec. 729 of AIR-21 (P.L. 106-181, April 5, 2000), however, requires that ASDI vendors demonstrate the capability to block selectively, and agree to block, registration numbers of any aircraft owner or operator at FAA's request pursuant to memoranda

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Clerk, U.S. District and  
Bankruptcy Courts

Dean Torgerson  
FOIA Coordinator  
March 20, 2009  
Page 2

did not develop and offer the BARR database system, FAA would not provide operators with the opportunity to block their aircraft movements from public ASDI dissemination at the FAA source.

Based on the foregoing background information, NBAA considers the BARR database list to be "voluntarily submitted" to FAA. As such, from the FOIA perspective, the Critical Mass<sup>4</sup> standard for confidentiality under FOIA Exemption 4 is applicable.<sup>5</sup> According to Critical Mass, voluntarily provided information is deemed "'confidential' for purposes of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained."<sup>6</sup> Put another way, ~~information submitted to the government on a voluntary basis is categorically protected from disclosure under the FOIA, provided that it is not "customarily" disclosed to the public by the submitter.~~

As the submitter of BARR data to FAA, NBAA states unequivocally that it does not, and would not under any circumstances, furnish the BARR lists it submits to FAA to any member of the public.<sup>7</sup> Indeed, doing so would violate the trust that NBAA Members and other aircraft owners and operators have placed in NBAA in furnishing this information to FAA. Aircraft owners and operators submit BARR letters to NBAA with the understanding and expectation that these ASDI block requests will be carried out pursuant to the instructions of the requester (i.e., shared exclusively with either ASDI vendors, which are required to sign Codes of Conduct in connection with the protection of ASDI data, or FAA). In consulting with some NBAA Members, NBAA has ascertained that the potential disclosure of blocked aircraft lists to the public raises significant concerns for the aircraft owners and operators involved.

If FAA were to release the BARR data pursuant to the FOIA Request Letter, the entire voluntary BARR arrangement itself would be jeopardized. NBAA, along with numerous individual owners and operators, would likely be compelled to suspend BARR participation in order to work out alternate arrangements with FAA to ensure that ASDI data relating to flights with sensitive commercial, security, or privacy implications are not divulged to the public. Thus, FAA should give serious consideration of the extent to which its ability to collect BARR information in the future would be impacted by the release of the data sought by the Requester.

Even if FAA were to deem the BARR aircraft data to be submitted on a compulsory basis (which it clearly is not), rather than a voluntary basis, disclosure of the blocked aircraft request listings described in

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of agreement between FAA and the vendors. Such provision does not address blocking ASDI information at the FAA data source, which is the purpose of the monthly aircraft registration number lists NBAA provides to FAA. Nevertheless, NBAA's BARR service as a whole helps ensure that sensitive ASDI data are reliably blocked (either at the FAA source or by the ASDI vendors), enabling FAA to fulfill the specific intent of Sec. 729 of AIR-21 and meet its broader obligation to protect confidential information from disclosure to the public.

<sup>4</sup> Critical Mass Energy Project v. NRC, 975 F.2d 871 (D.C. Cir. 1992) (en banc).

<sup>5</sup> The other criteria of Exemption 4 – that the BARR information is (1) obtained from a person and (2) financial or commercial – are readily met in this instance. The BARR information is obtained by FAA from NBAA, which meets the FOIA definition of a "person," and it is commercial in that it relates to the business and/or trade decisions of individual aircraft owners or operators. See, e.g., Gulf & W. Indus. v. United States, 615 F.2d 527, 529 (D.C. Cir. 1979).

<sup>6</sup> Critical Mass at 879.

<sup>7</sup> As noted, NBAA does submit BARR lists to commercial ASDI vendors, but only when specifically requested to do so by individual aircraft operators. The BARR lists provided to FAA are entirely separate and relate specifically to ASDI blocking at the FAA source. These lists are provided exclusively, and confidentially, to FAA.

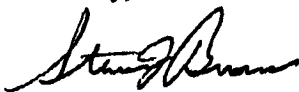
Dean Torgerson  
FOIA Coordinator  
March 20, 2009  
Page 3

the FOIA Request Letter would be unlawful under Exemption 4 (and, in the case of some individual aircraft owners who utilize the BARR system, possibly Exemption 6). In fact, releasing the lists of aircraft blocked from situational data dissemination would be completely at odds with the intent of the BARR program. The *raison d'être* of the BARR program is the protection of information that is sensitive from either a commercial, security, or privacy standpoint (as determined by each individual aircraft owner or operator). Aircraft owners and operators seek the blocking of situational display data for a variety of specific reasons. For instance, some operators may seek to ensure competitors are not able to track typical city-pair markets, movements of personnel or goods, or flights that reveal business trends or strategies. Well-known or high net worth individuals may have personal security concerns if members of the public are able to track their destinations and arrival times. Private individuals may have similar concerns.

Indeed, the fact that a specific aircraft tail number has been requested to be blocked from ASDC / dissemination and should itself be deemed confidential information that could cause the primary submitter of the information (the aircraft owner or operator) harm from a competitive, personal safety or security, or privacy standpoint if divulged. Upon learning that a specific aircraft tail number is included in the BARR list, a member of the public could readily track down the identity of the owner (through the FAA's public aircraft registry database) and attempt to investigate the reason the owner seeks blocking of the aircraft data. For this reason alone, in order to be effective, the BARR program, including lists of participating aircraft, needs to remain completely confidential.

In any event, NBAA trusts that FAA will agree that the BARR data voluntarily submitted by NBAA are not customarily released to the public and, consequently, are confidential and protected from disclosure under FOIA Exemption 4. If FAA decides not to adhere to NBAA's valid legal objections to the release of the exempt records identified in this letter, NBAA insists on receiving notice of such a determination a reasonable number of days (at least 30) before the records are disclosed to the Requester, as required by 49 C.F.R. § 7.17(b), to afford NBAA and NBAA Members adequate time to protect their rights.<sup>8</sup>

Sincerely,



Steven Brown

cc: George U. Carneal, Hogan & Hartson LLP

<sup>8</sup> 49 C.F.R. § 7.17(b) states, in pertinent part, "Whenever a decision is made to disclose such information over the objection of a submitter, the office responsible for the decision will forward to the submitter a written notice of intent to disclose that will, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended."



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

System Operations Services  
800 Independence Avenue, SW.  
Washington, DC 20591

**JUN 01 2009**

**Certified Mail -- Return Receipt Requested**

Mr. Steven Brown  
National Business Aircraft Association  
1200 18th Street, NW., Suite 400  
Washington, DC 20036

Dear Mr. Brown:

Re: Freedom of Information Act (FOIA) request 2009-1947

This letter is in response to the National Business Aircraft Association's (NBAA) letter of March 20, 2009 objecting to the Federal Aviation Administration's (FAA) release of a list of aircraft registration numbers that are blocked on the FAA's Aircraft Situational Display to Industry (ASDI) and the Enhanced Traffic Management System (ETMS) databases. The release of the NBAA's monthly lists of such registration numbers (the "block list") has been requested under the Freedom of Information Act (FOIA).

The FAA has carefully reviewed the NBAA's objections to the release of the block list and has determined that the requested information does not fall within any exemption under FOIA. The requested information is simply a list of aircraft registration numbers that are blocked from the ASDI, which prevents the real-time or near real-time tracking of such aircraft. Although the FAA has agreed to block the real-time or near real-time display of registration numbers for aircraft on the NBAA list, it has never agreed to withhold any other disclosure of such registration numbers, including the display of such registration numbers in other than real-time or near real-time.

The NBAA states that it gathers requests to block registration numbers from its members and others and then provides the information to FAA. The NBAA contends that the submissions are voluntary and that any disclosure under FOIA should comply with the standard for privileged and confidential information set forth in *Critical Mass Energy Project v. NRC*, (975 F.2d 871, 878 (D.C. Cir. 1992)) and its companion *National Parks* standard (see, *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 767-70 (D.C. Circuit 1974)).

To be withheld under exemption 4 of FOIA, information must be either a trade secret or commercial or financial information obtained from a person that is privileged or confidential. Under the first prong of exemption 4, information must be either a trade secret or confidential commercial or financial information to be eligible for non-disclosure. The information sought in this particular FOIA request is a list of aircraft registration numbers that have been blocked prior to real-time or near real-time release. The NBAA list is not a trade secret, nor is it commercial or financial information within the meaning of the FOIA. Further, there is no evidence that the NBAA, which is the submitter, has any protected interest in the list.

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As the first prong of FOIA exemption 4 is not met, there is no need to address any other exemption issues. The FAA intends to release this information on June 16, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. A. Might', with a stylized flourish at the end.

Carol A. Might  
Director of System Operations Litigation  
Air Traffic Organization



National Business Aviation Association

Exhibit 4

Case No. \_\_\_\_\_

## Introduction to Flight Tracking & ASDI

For business aircraft operators interested in tracking the minute-by-minute progress of their aircraft in real-time, Aircraft Situation Display to Industry (ASDI) data now are available to private subscribers through several vendors. The ASDI information includes the location, altitude, airspeed, destination, estimated time of arrival and tail number or designated identifier of air carrier and general aviation aircraft operating on IFR flight plans within U.S. airspace. Subscribers include flight departments, charter operators, limousine firms, airframe and power plant manufacturers, air carriers, FBOs, research firms, and other users.

Operators with privacy and industrial security concerns for their operations resulting from the availability of ASDI data can block public dissemination of these data through NBAA.

ASDI information has been available to scheduled airlines since 1991. NBAA, the General Aviation Manufacturers Association, the Aircraft Owners & Pilots Association, the Helicopter Association International and the National Air Transportation Association petitioned the FAA to make ASDI information available on a "need-to-know" basis in 1995. Subsequently, NBAA became concerned with the broad-scale dissemination of ASDI data. In 1997, NBAA began working with the FAA and ASDI vendors to develop a system to help protect the privacy of general aviation operators engaging in IFR operations.

## Block Aircraft Registration Request (BARR) Program

Operators may request that their aircraft's situational data be barred from public availability by submitting a Block Aircraft Registration Request (BARR) to NBAA. NBAA administers the BARR Database on behalf of the FAA.

In 2005 NBAA participated in a thorough review of the BARR program with the FAA. NBAA Member flight departments expressed increasing concerns about the protection of their passengers' privacy and security as well as the protection of company proprietary information. This increased concern resulted from a proliferation of ASDI vendors and vast improvements in technology since the late 1990's that made it much easier for the casual citizen to obtain flight information about aircraft that were on the BARR list via legal workarounds. A primary result of this review was the addition of new option for blocking ASDI information at the FAA data source, eliminating any chance of the data being accidentally or intentionally released by ASDI vendors. This FAA block restricts the use of flight tracking applications to monitor flights.

Aircraft operators must submit a written request to NBAA to participate in the BARR Program. The request must be printed on company letterhead and include:

- a copy of the aircraft registration
- the make, model and tail number for each aircraft to be blocked
- the signature of the NBAA Member Representative (or if not an NBAA Member, the signature of the aircraft owner or operator)

Operators may use the **BARR Submission Formatting Form** to automatically format the required information above into a letter to send to NBAA Headquarters, along with a copy of the aircraft registration.

Requests for adding/dropping aircraft from the list will be taken at any time, however the block will not go into effect immediately. The block database at the FAA source at the VOLPE Center will be updated monthly. **Aircraft operators considering the FAA level block should first check with their flight tracking vendor to discuss the impact that this option will have on their ability to monitor flights.** The block database will be submitted to ASDI vendors monthly. The following chart reflects cut off dates and action dates for the adding/dropping from the block list.

Option #1 – Blocked by ASDI Vendors	
Requests Made by:	the 14th of the month

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 6/11/2009



<b>Will take place by:</b>	the 1st day of the following month
<b>Option #2 – Blocked at FAA Source</b>	
<b>Requests Made by:</b>	the 14th of the month
<b>Will take place by:</b>	the 1st day of the following month

BARR submissions must be faxed to (202) 478-0035 or mailed to:

NBAA  
BARR Program Manager  
1200 18th Street NW  
Suite 400  
Washington, DC 20036-2527

## Unblocking Aircraft

Once an aircraft's tail number has been added to the block list, operators must submit a written request to have their tail number removed from the block list. The request must be printed on company letterhead and include:

- a copy of the aircraft registration
- the make, model and tail number for each aircraft to be unblocked
- the signature of the NBAA Member Representative (or if not an NBAA Member, the signature of the aircraft owner or operator)

Operators may use the **Unblock Formatting Form** to automatically format the required information above into a letter to send to NBAA Headquarters, along with a copy of the aircraft registration.

Unblock requests must be faxed to (202) 478-0035 or mailed to:

NBAA  
BARR Program Manager  
1200 18th Street NW  
Suite 400  
Washington, DC 20036-2527

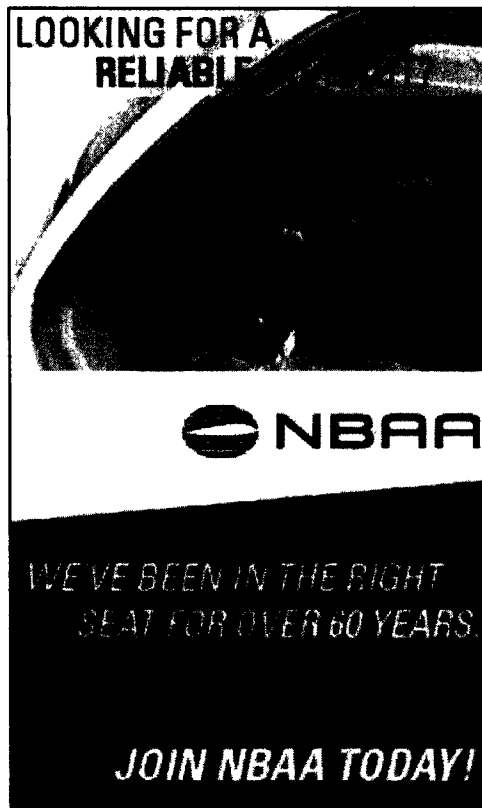
## Vendor Code of Conduct

NBAA developed a **Vendor Code of Conduct** in response to operator concerns about industrial espionage and personal security and safety of crew and passengers. The Vendor Code of Conduct addresses specific actions ASDI vendors are expected to comply with that meet the intent of paragraph 9 of the FAA Memorandum of Agreement (MOA) vendors must sign in order to receive the FAA ASDI feed. All vendors, including third parties that direct vendors further distribute the ASDI feed to, must print, sign and date the March 2006 Vendor Code of Conduct. The Vendor Code of Conduct should be mailed or faxed to the BARR submission address mentioned in the BARR section above.

- **Review the ASDI Vendor Code of Conduct**

For more information about NBAA's BARR Program, please e-mail [barr@nbaa.org](mailto:barr@nbaa.org).

- **BARR Submission Formatting Form**
- **Unblocking Aircraft**
- **Vendor Code of Conduct**



**National Business Aviation Association**

1200 18th Street NW, Suite 400, Washington, DC 20036 • Tel: (202) 783-8000 • Fax: (202) 331-8364 • [info@nbaa.org](mailto:info@nbaa.org)



National Business Aviation Association



Aircraft operators may use this form to automatically format the required information into a letter to fax to NBAA Headquarters at (202) 478-0035.

This letter may be used to request blocking by ASDI vendors or at the FAA source.

BARR submissions must be printed on the aircraft operator's company letterhead, signed, and accompanied with a copy of the aircraft registration certificate for each aircraft listed.

#### Company Information:

Company Name	<input type="text"/>
NBAA Member No.	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
City	<input type="text"/>
State	<input type="text"/>
ZIP	<input type="text"/>
Country	<input type="text" value="USA"/>

#### Contact Information:

Company Representative Name	<input type="text"/>
Company Representative Title	<input type="text"/>
Phone Number	<input type="text"/>
Fax Number	<input type="text"/>
E-Mail Address	<input type="text"/>

#### Blocking Options

- **Option #1 – Blocked by ASDI Vendors**  
Data blocking occurs at the vendor level. This allows for individual owners, who have otherwise asked their aircraft information be blocked, to allow their own particular ASDI vendor to selectively provide tracking information for the owner.
- **Option #2 – Blocked at FAA Source**  
Data blocking occurs at the FAA where ASDI data originates meaning that the information never reaches ASDI vendors. As flight tracking vendors are unable to access the data, aircraft operators cannot grant individual vendors permission to track their own aircraft. Aircraft operators considering the FAA level block should first check with their flight tracking vendor to discuss the impact that this option will have on their ability to monitor flights.







#### Blocking Implementation

Option #1 – Blocked by ASDI Vendors
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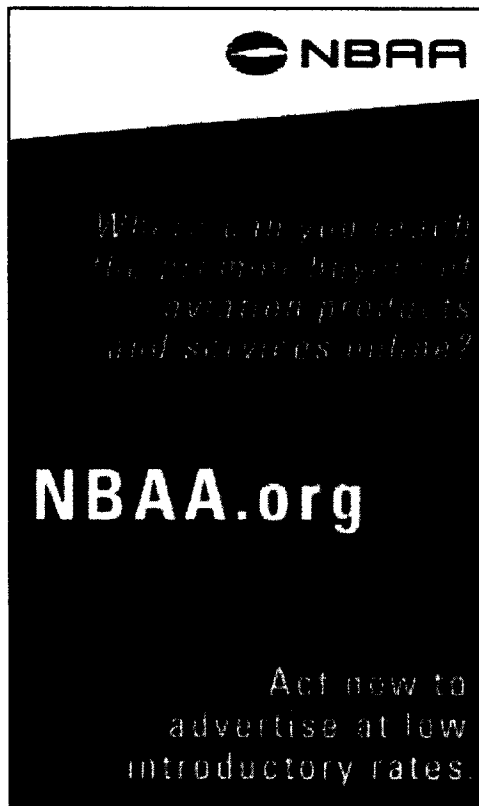
Requests Made by:	the 14th of the month
Will take place by:	the 1st day of the following month

<b>Option #2 – Blocked at FAA Source</b>	
Requests Made by:	the 14th of the month
Will take place by:	the 1st day of the following month

**Aircraft to Be Blocked:**

Tail Number	Aircraft Make	Aircraft Model	Blocking Option
<input type="text"/>	<input type="text"/>	<input type="text"/>	-- Select Blocking Option -- 
<input type="text"/>	<input type="text"/>	<input type="text"/>	-- Select Blocking Option -- 
<input type="text"/>	<input type="text"/>	<input type="text"/>	-- Select Blocking Option -- 
<input type="text"/>	<input type="text"/>	<input type="text"/>	-- Select Blocking Option -- 
<input type="text"/>	<input type="text"/>	<input type="text"/>	-- Select Blocking Option -- 
<input type="text"/>	<input type="text"/>	<input type="text"/>	-- Select Blocking Option -- 

- [BARR Submission Formatting Form](#)
- [Unblocking Aircraft](#)
- [Vendor Code of Conduct](#)



**National Business Aviation Association**

1200 18th Street NW, Suite 400, Washington, DC 20036 • Tel: (202) 783-9000 • Fax: (202) 331-8364 • [info@nbaa.org](mailto:info@nbaa.org)



National Business Aviation Association



Aircraft operators may use this form to automatically format the required information into a letter to fax to NBAA Headquarters at (202) 478-0035.

This letter may be used to request unblocking of tail numbers by ASDI vendors and at the FAA source.

**BARR submissions must be printed on the aircraft operator's company letterhead, signed and accompanied with a copy of the aircraft registration certificate for each aircraft listed.**

**Company Information:**

Company Name	<input type="text"/>
NBAA Member No.	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
City	<input type="text"/>
State	<input type="text"/>
ZIP	<input type="text"/>
Country	<input type="text" value="USA"/>

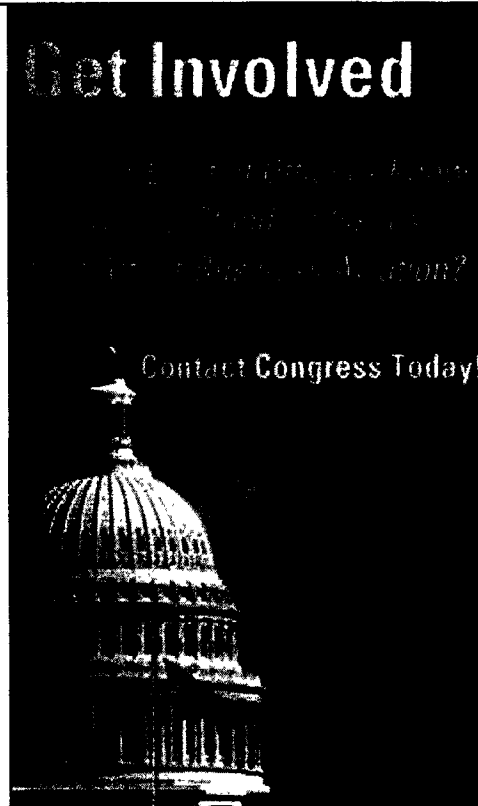
**Contact Information:**

Company Representative Name	<input type="text"/>
Company Representative Title	<input type="text"/>
Phone Number	<input type="text"/>
Fax Number	<input type="text"/>
E-Mail Address	<input type="text"/>

**Aircraft to Be Unblocked:**

Tail Number	Aircraft Make	Aircraft Model
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

- **BARR Submission Formatting Form**
- **Unblocking Aircraft**
- **Vendor Code of Conduct**



**National Business Aviation Association**

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